

evidence, and may prohibit the parolee from contesting matters already adjudicated against him in other forums.

(c) At a local revocation hearing, the Commission shall, on the request of the alleged violator, require the attendance of any adverse witnesses who have given statements upon which revocation may be based. The adverse witnesses who are present shall be made available for questioning and cross-examination in the presence of the alleged violator. The Commission may also require the attendance of adverse witnesses on its own motion, and may excuse any requested adverse witness from appearing at the hearing (or from appearing in the presence of the alleged violator) if it finds good cause for so doing. A finding of good cause for the non-appearance of a requested adverse witness may be based, for example, on a significant possibility of harm to the witness, the witness not being reasonably available, and/or the availability of documentary evidence that is an adequate substitute for live testimony.

(d) All evidence upon which a finding of violation may be based shall be disclosed to the alleged violator before the revocation hearing. Such evidence shall include the Community Supervision Officer's letter summarizing the parolee's adjustment to parole and requesting the warrant, all other documents describing the charged violation or violations of parole, and any additional evidence upon which the Commission intends to rely in determining whether the charged violation or violations, if sustained, would warrant revocation of parole. If the parolee is represented by an attorney, the attorney shall be provided, prior to the revocation hearing, with a copy of the parolee's presentence investigation report, if such report is available to the Commission. If disclosure of any information would reveal the identity of a confidential informant or result in harm to any person, that information may be withheld from disclosure, in which case a summary of the withheld information shall be disclosed to the parolee prior to the revocation hearing.

(e) An alleged violator may be represented by an attorney at either a local or an institutional revocation

hearing. In lieu of an attorney, an alleged violator may be represented at any revocation hearing by a person of his choice. However, the role of such non-attorney representative shall be limited to offering a statement on the alleged violator's behalf. Only licensed attorneys shall be permitted to question witnesses, make objections, and otherwise provide legal representation for parolees, except in the case of law students appearing before the Commission as part of a court-approved clinical practice program, with the consent of the alleged violator, and under the personal direction of a lawyer or law professor who is physically present at the hearing.

(f) At a local revocation hearing, the Commission shall secure the presence of the parolee's Community Supervision Officer, or a substitute Community Supervision Officer, who shall bring the parolee's supervision file, if the parolee's Community Supervision Officer is not available. At the request of the hearing examiner, such officer shall provide testimony at the hearing concerning the parolee's adjustment to parole.

(g) After the revocation hearing, the hearing examiner shall prepare a summary of the hearing that includes a description of the evidence against the parolee and the evidence submitted by the parolee in defense or mitigation of the charges, a summary of the arguments against revocation presented by the parolee, and the examiner's recommended decision. The hearing examiner's summary, together with the parolee's file (including any documentary evidence and letters submitted on behalf of the parolee), shall be given to another examiner for review. When two hearing examiners concur in a recommended disposition, that recommendation, together with the parolee's file and the hearing examiner's summary of the hearing, shall be submitted to the Commission for decision.

[65 FR 45888, July 26, 2000, as amended at 67 FR 2570, Jan. 18, 2002]

§ 2.104 Issuance of subpoena for appearance of witnesses or production of documents.

(a)(1) If any adverse witness (*i.e.*, a person who has given information upon

which revocation may be based) refuses, upon request by the Commission, to appear at a probable cause hearing or local revocation hearing, a Commissioner may issue a subpoena for the appearance of such witness. Such subpoena may also be issued at the discretion of a Commissioner in the event such adverse witness is judged unlikely to appear as requested.

(2) In addition, a Commissioner may, upon a showing by the parolee that a witness whose testimony is necessary to the proper disposition of his case will not appear voluntarily at a local revocation hearing or provide an adequate written statement of his testimony, issue a subpoena for the appearance of such witness at the revocation hearing.

(3) Such subpoenas may also be issued at the discretion of a Commissioner if deemed necessary for the orderly processing of the case.

(b) A subpoena issued pursuant to paragraph (a) of this section may require the production of documents as well as, or in lieu of, a personal appearance. The subpoena shall specify the time and the place at which the person named therein is commanded to appear, and shall specify any documents required to be produced.

(c) A subpoena may be served by any Federal or District of Columbia officer authorized to serve criminal process. The subpoena may be served at any place within the judicial district in which the place specified in the subpoena is located, or any place where the witness may be found. Service of a subpoena upon a person named therein shall be made by delivering a copy thereof to such a person.

(d) If a person refuses to obey such subpoena, the Commission may petition a court of the United States for the judicial district on which the parole proceeding is being conducted, or in which such person may be found, to require such person to appear, testify, or produce evidence. If the court issues an order requiring such person to appear before the Commission, failure to obey such an order is punishable as contempt. 18 U.S.C. 4214 (1976).

[65 FR 45888, July 26, 2000, as amended at 67 FR 2571, Jan. 18, 2002]

§ 2.105 Revocation decisions.

(a) Whenever a parolee is summoned or retaken by the Commission, and the Commission finds by a preponderance of the evidence that the parolee has violated one or more conditions of parole, the Commission may take any of the following actions:

(1) Restore the parolee to supervision, including where appropriate:

- (i) Reprimand the parolee;
- (ii) Modify the parolee's conditions of release; or
- (iii) Refer the parolee to a residential community treatment center for all or part of the remainder of his original sentence; or

(2) Revoke parole.

(b) If parole is revoked under this section, the Commission shall determine whether immediate reparole is warranted or whether the parolee should be returned to prison. If the parolee is returned to prison, the Commission shall also determine whether to set a presumptive release date pursuant to § 2.81.

(c) Decisions under this section shall be made by one Commissioner, except that a decision to override an examiner panel recommendation shall require the concurrence of two Commissioners. The final decision following a local revocation hearing shall be issued within 86 days of the retaking of the parolee on the parole violation warrant. The final decision following an institutional revocation hearing shall be issued within 21 days of the hearing, excluding weekends and holidays.

(d)(1) Except as provided in paragraphs (d)(2) and (d)(3) of this section, the Commission shall grant a revoked parolee credit toward completion of the sentence for all time served on parole.

(2)(i) The Commission shall forfeit credit for the period of parole if a parolee is convicted of a crime committed during a period of parole and that is punishable by a term of imprisonment of more than one year.

(ii) If the crime is punishable by any other term of imprisonment, the Commission shall forfeit credit for the period of parole unless the Commission determines that such forfeiture is not necessary to protect the public welfare.